

AMENDED IN SENATE JULY 9, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 1093

**Introduced by Committee on Judiciary (Escutia (Chair),
Morrow (Vice Chair), Alby, Aroner, Baugh, Figueroa,
Keeley, Kuehl, Ortiz, Pacheco, Shelley, and Villaraigosa)**

February 27, 1997

An act to amend Sections 1281.6, 1281.9, 1282, and 1286.2 of the Code of Civil Procedure, relating to arbitration.

LEGISLATIVE COUNSEL'S DIGEST

AB 1093, as amended, Committee on Judiciary. Arbitration.

Existing law governing the enforcement of arbitration agreements provides that, except as specified, in any arbitration pursuant to an arbitration agreement involving a claim for damages when a person is proposed for nomination or appointment to serve as a neutral arbitrator, as specified, that person shall disclose, within 10 days of service of notice of the proposed nomination or appointment, to all parties, certain information concerning the names of prior or pending cases arbitrated by that proposed arbitrator. Existing law provides for the disqualification of a proposed nominee or appointee, as prescribed.

This bill would *revise and* recast these provisions by, among other things, ~~specifying the applicability of the provision to neutral arbitrators proposed by the parties or party arbitrators or by specified entities, and~~ revising the procedures relating

to the disqualification of a neutral arbitrator, as specified *and revising the contents of a required notice*.

This bill would also make conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1281.6 of the Code of Civil
2 Procedure is amended to read:

3 1281.6. If the arbitration agreement provides a
4 method of appointing an arbitrator, that method shall be
5 followed. If the arbitration agreement does not provide
6 a method for appointing an arbitrator, the parties to the
7 agreement who seek arbitration and against whom
8 arbitration is sought may agree on a method of appointing
9 an arbitrator and that method shall be followed. In the
10 absence of an agreed method, or if the agreed method
11 fails or for any reason cannot be followed, or when an
12 arbitrator appointed fails to act and his or her successor
13 has not been appointed, the court, on petition of a party
14 to the arbitration agreement, shall appoint the arbitrator.

15 When a petition is made to the court to appoint a
16 neutral arbitrator, the court shall nominate five persons
17 from lists of persons supplied jointly by the parties to the
18 arbitration or obtained from a governmental agency
19 concerned with arbitration or private disinterested
20 association concerned with arbitration. The parties to the
21 agreement who seek arbitration and against whom
22 arbitration is sought may within five days of receipt of
23 notice of the nominees from the court jointly select the
24 arbitrator whether or not the arbitrator is among the
25 nominees. If the parties fail to select an arbitrator within
26 the five-day period, the court shall appoint the arbitrator
27 from the nominees.

28 SEC. 2. Section 1281.9 of the Code of Civil Procedure
29 is amended to read:

30 1281.9. (a) In any arbitration pursuant to an
31 arbitration agreement, ~~when a person is proposed by all~~
32 ~~parties or by all party arbitrators to serve as a neutral~~

~~1 arbitrator, or is to be appointed by the court to serve as~~
~~2 a neutral arbitrator in response to any petition brought~~
~~3 pursuant to Section 1281.6, the proposed nominee or~~
~~4 appointee shall disclose in writing, within 10~~ *when a*
5 person is to serve as a neutral arbitrator, subject only to
6 compliance with this section, the proposed neutral
7 arbitrator shall disclose in writing within 10 calendar days
8 of service of notice of the proposed nomination or
9 appointment, to all parties, all of the following:

10 (1) The names of the parties to all prior or pending
11 noncollective bargaining cases in which the proposed
12 neutral arbitrator served or is serving as a party arbitrator
13 for any party to the arbitration proceeding or lawyer for
14 a party and the results of each case arbitrated to
15 conclusion, including the date of the arbitration award,
16 identification of the prevailing party, the names of the
17 parties' attorneys and the amount of monetary damages
18 awarded, if any. In order to preserve confidentiality, it
19 shall be sufficient to give the name of any party who is not
20 a party to the pending arbitration as "claimant" or
21 "respondent."

22 (2) The names of the parties to all prior or pending
23 noncollective bargaining cases involving any party to the
24 arbitration or lawyer for a party for which the proposed
25 neutral arbitrator served or is serving as neutral
26 arbitrator, and the results of each case arbitrated to
27 conclusion, including the date of the arbitration award,
28 identification of the prevailing party, the names of the
29 parties' attorneys and the amount of monetary damages
30 awarded, if any. In order to preserve confidentiality, it
31 shall be sufficient to give the name of any party not a
32 party to the pending arbitration as "claimant" or
33 "respondent."

34 (3) *Any attorney-client relationship the proposed*
35 *neutral arbitrator has or had with any party or lawyer for*
36 *a party to the arbitration agreement.*

37 ~~(3)~~

38 (4) Any professional or significant personal
39 relationship the proposed neutral arbitrator or his or her
40 spouse or minor child living in the household has or has

1 had with any party to the arbitration proceeding or
2 lawyer for a party.

3 (b) A proposed neutral arbitrator shall be disqualified
4 if he or she fails to comply with subdivision (a) and any
5 party entitled to receive the disclosure serves a notice of
6 disqualification within 15 calendar days after the
7 proposed nominee or appointee fails to comply with
8 subdivision (a). A proposed neutral arbitrator shall be
9 deemed to have complied with subdivision (a) with
10 respect to any arbitration commenced prior to January 1,
11 1995, if the person declares in writing that he or she has
12 disclosed all required information pertaining to those
13 arbitrations within his or her knowledge or possession and
14 has made a good faith effort to obtain the required
15 information from any arbitration service administering
16 those prior cases.

17 (c) (1) If the proposed neutral arbitrator complies
18 with subdivision (a), the proposed neutral arbitrator shall
19 be disqualified on the basis of the disclosure statement
20 after any party entitled to receive the disclosure serves a
21 notice of disqualification, within 15 calendar days after
22 service of the disclosure statement.

23 (2) A party shall have the right to disqualify one
24 court-appointed arbitrator without cause in any one
25 arbitration, and may petition the court to disqualify a
26 subsequent appointee only upon a showing of cause.

27 (d) The right of a party to disqualify a proposed
28 neutral arbitrator pursuant to this section shall be waived
29 if the party fails to serve the notice pursuant to the times
30 set forth in this section, unless the proposed nominee or
31 appointee makes a material omission or material
32 misrepresentation in his or her disclosure. In no event
33 may a notice of disqualification be given after a hearing
34 of any contested issue of fact relating to the merits of the
35 claim or after any ruling by the arbitrator regarding any
36 contested matter. Nothing in this subdivision shall limit
37 the right of a party to vacate an award pursuant to Section
38 1286.2, or to disqualify an arbitrator—pursuant to
39 subdivision (c) of Section 1282 or any other law or
40 statute..

1 (e) An arbitrator shall disclose to all parties the
2 existence of any grounds specified in Section 170.1 for
3 disqualification of a judge; and, if any such ground exists,
4 shall disqualify himself or herself upon demand of any
5 party made before the conclusion of the arbitration
6 proceeding. However, this subdivision does not apply to
7 arbitration proceedings conducted under a collective
8 bargaining agreement between employers and
9 employees or their respective representatives.

10 ~~(e)~~

11 (f) For purposes of this section, “lawyer for a party”
12 includes any lawyer or law firm currently associated in
13 the practice of law with the lawyer hired to represent a
14 party.

15 ~~(f)~~

16 (g) For purposes of this section, “prior cases” means
17 noncollective bargaining cases in which an arbitration
18 award was rendered within one of the following time
19 periods:

20 (1) Three years prior to the date of the proposed
21 nomination or appointment if the proposed nomination
22 or appointment occurs on or between January 1, 1995, and
23 December 31, 1995.

24 (2) Four years prior to the date of the proposed
25 nomination or appointment if the proposed nomination
26 or appointment occurs on or between January 1, 1996, and
27 December 31, 1996.

28 (3) Five years prior to the date of the proposed
29 nomination or appointment if the proposed nomination
30 or appointment occurs on or after January 1, 1997.

31 ~~(g)~~

32 (h) For purposes of this section, “any arbitration” does
33 not include an arbitration conducted pursuant to the
34 terms of a public or private sector collective bargaining
35 agreement, ~~arbitrations under Article 13 (commencing~~
36 ~~with Section 6200) of Chapter 4 of Division 3 of the~~
37 ~~Business and Professions Code, or international~~
38 ~~arbitrations under Title 9.3 (commencing with Section~~
39 ~~4297.11) of this part.~~ agreement.

1 SEC. 3. Section 1282 of the Code of Civil Procedure is
2 amended to read:

3 1282. Unless the arbitration agreement otherwise
4 provides, or unless the parties to the arbitration otherwise
5 provide by an agreement which is not contrary to the
6 arbitration agreement as made or as modified by all of the
7 parties thereto:

8 (a) The arbitration shall be by a single neutral
9 arbitrator.

10 (b) If there is more than one arbitrator, the powers
11 and duties of the arbitrators, other than the powers and
12 duties of a neutral arbitrator, may be exercised by a
13 majority of them if reasonable notice of all proceedings
14 has been given to all arbitrators.

15 (c) If there is more than one neutral arbitrator:

16 (1) The powers and duties of a neutral arbitrator may
17 be exercised by a majority of the neutral arbitrators.

18 (2) By unanimous agreement of the neutral
19 arbitrators, the powers and duties may be delegated to
20 one of their number but the power to make or correct the
21 award may not be so delegated.

22 (d) If there is no neutral arbitrator, the powers and
23 duties of a neutral arbitrator may be exercised by a
24 majority of the arbitrators.

25 ~~(e) An arbitrator shall disclose to all parties the~~
26 ~~existence of any grounds specified in Section 170.1 for~~
27 ~~disqualification of a judge; and, if any such ground exists,~~
28 ~~shall disqualify himself or herself upon demand of any~~
29 ~~party made before the conclusion of the arbitration~~
30 ~~proceeding. However, this subdivision does not apply to~~
31 ~~arbitration proceedings conducted under a collective~~
32 ~~bargaining agreement between employers and~~
33 ~~employees or their respective representatives.~~

34 SEC. 4. Section 1286.2 of the Code of Civil Procedure
35 is amended to read:

36 1286.2. Subject to Section 1286.4, the court shall
37 vacate the award if the court determines any of the
38 following:

39 (a) The award was procured by corruption, fraud or
40 other undue means.

1 (b) There was corruption in any of the arbitrators.

2 (c) The rights of the party were substantially
3 prejudiced by misconduct of a neutral arbitrator.

4 (d) The arbitrators exceeded their powers and the
5 award cannot be corrected without affecting the merits
6 of the decision upon the controversy submitted.

7 (e) The rights of the party were substantially
8 prejudiced by the refusal of the arbitrators to postpone
9 the hearing upon sufficient cause being shown therefor
10 or by the refusal of the arbitrators to hear evidence
11 material to the controversy or by other conduct of the
12 arbitrators contrary to the provisions of this title.

13 (f) An arbitrator making the award was subject to
14 disqualification upon grounds specified in Section 1281.9
15 ~~or subdivision (e) of Section 1282~~, but failed upon receipt
16 of timely demand to disqualify himself or herself as
17 required by ~~those provisions~~ *that provision*. However,
18 this subdivision does not apply to arbitration proceedings
19 conducted under a collective bargaining agreement
20 between employers and employees or between their
21 respective representatives.

